known hidden defects, which the latter could not have discovered in the exercise of reasonable care. *Moore* v. *Parker*, 63 Kan. 52, 64 Pac. 975; *Howard* v. *Washington Water Power Co.*, 134 Pac. (Wash.) 927. The landlord owes no affirmative duty to detect and warn the tenant against hidden defects. *Whitmore* v. *Orono Pulp & Paper Co.*, 91 Me. 297, 39 Atl. 1032; *Shinkle, Wilson, & Kreis Co.* v. *Birney & Seymour*, 68 Oh. St. 328, 67 N. E. 715; *Hines* v. *Wilcox*, 96 Tenn. 148, 33 S. W. 914, 100 Tenn. 538, 46 S. W. 297, *contra*. The landlord ordinarily owes no greater duty to the tenant's employees, licensees, and business guests than to the tenant. The latter, having control of the premises, must be the one to warn them against hidden defects. *O'Brien* v. *Capwell*, 46 Barb. (N. Y.) 497; *Meade* v. *Montrose*, 160 S. W. (Mo.) 11; *Bailey* v. *Kelly*, 86 Kan. 911, 122 Pac. 1027, *contra*. Some cases seem to hold, that where the landlord leases premises for a specific use he is liable if they are not fit for that use. *Godley* v. *Hagerty*, 20 Pa. 387; *Carson* v. *Godley*, 26 Pa. 111. But so broad an exception to the general rule is not supported by the weight of authority. See *Jaffe* v. *Harteau*, 56 N. Y. 398, 401. Where, however, the owner leases premises for a public or quasi-public purpose, the public comes upon the premises in response to the implied invitation of the lessor and the latter owes a duty to the public to have the premises in suitable condition for that purpose at the time of the demise. *Fox* v. *Buffalo Park*, 47 N. Y. Supp. 788, 21 App. Div. 321; *Barrett* v. *Lake Ontario Beach Improvement Co.*, 174 N. Y. 310, 66 N. E. 968; *Joyce* v. *Martin*, 15 R. I. 558, 10 Atl. 620. See also, 44 AM. LAW REG. 273, 276.

LIMITATION OF ACTION — NEW PROMISE AND PART PAYMENT — EFFECT OF PAYMENTS BY SURETY OF CLAIM ASSIGNED AS SECURITY. — The defendant made a note to the plaintiff, and assigned him a claim against an insolvent bank as security. Later there was a payment to the plaintiff by the receiver of the bank. After the period of limitation has run upon the note, the plaintiff sues upon it. *Held*, that the payment does not toll the Statute of Limitations. *Security Bank* v. *Finkelstein*, 145 N. Y. Supp. 5 (Sup. Ct., App. Div.).

The defense of the Statute of Limitations can always be waived by the debtor, and a part payment is often a sufficient waiver. There must, however, be such an acknowledgment of the debt, by words or part payment, as fairly to imply a promise to pay the balance. *Linsell* v. *Bonsor*, 2 Bing. N. C. 241; *Chambers* v. *Garland*, 3 Greene (Ia.) 322. But the authority of the debtor must be found before any promise can be implied, and accordingly it is held that an acknowledgment of the debt by one of several joint debtors will not bind the others. *Bush* v. *Stowell*, 71 Pa. 208; *Boynton* v. *Spafford*, 162 Ill. 113, 44 N. E. 379. Nor will a payment by his assignee for creditors bind a debtor. *Marienthal* v. *Mosler*, 16 Oh. St. 566; *Pickett* v. *King*, 34 Barb. (N. Y.) 193. The argument of the considerable minority opposed to the principal case, is that the creditor has been made the debtor's agent to collect the collateral debt and apply it in payment, and that such a payment should bind the debtor, on the principles of agency. *Bosler* v. *McShane*, 78 Neb. 86, 113 N. W. 998; *Buffinton* v. *Chase*, 152 Mass. 534, 25 N. E. 977. It is hard to see, however, how the agency can be construed so broadly as to include a promise to pay the rest of the debt. Accordingly the principal case and the slight majority with it would appear to hold the better view. *Brown* v. *Latham*, 58 N. H. 30; *Wolford* v. *Cook*, 71 Minn. 77, 73 N. W. 706.

MALICIOUS ABUSE OF PROCESS — EFFECT OF BAD MOTIVE — TERMINATION OF PRIOR SUIT IN MALICIOUS PROSECUTION. — For the purpose of preventing a sale of the plaintiff's real estate, the defendant brought suit against the plaintiff to collect alleged commissions, and levied an attachment on the property. Before the termination of this action, the plaintiff sues for abuse

of process. *Held*, that the plaintiff may recover. *Malone* v. *Belcher*, 103 N. E. 637 (Mass.).

Malicious abuse of process is defined as the employment of legal process for a purpose not designed by law. See COOLEY ON TORTS, 2 ed., p. 220. Under this broad definition any suit brought maliciously would be malicious abuse of process. The action must be more restricted. Two elements would seem essential: an ulterior motive, and an act in the use of process not proper in the proceeding. *Jeffery* v. *Robbins*, 73 Ill. App. 353; see *Pittsburg, etc. R. R.* v. *Wakefield Hardware Co.*, 143 N. C. 54, 58, 55 S. E. 422, 424. It may be admitted that the wrong is as great in the principal case, where the ulterior motive, the prevention of the sale, is accomplished by the mere attachment, as in cases where a further act is done. But the right to use the machinery of the law to enforce a valid claim is a right so absolute that bad motive will not remove the justification. *Docter* v. *Riedel*, 96 Wis. 158, 71 N. W. 119. So where a bankruptcy petition was presented by the defendant, on a valid act of bankruptcy, no action arises, though his sole motive was to exclude the plaintiff from a partnership. *King* v. *Henderson* [1898], A. C. 720. The moment, however, the defendant does some act beyond the process, such as coercing the plaintiff to do something which has no reference to the proceeding, his justification fails, and an action lies. *Graingee* v. *Hill*, 4 Bing. (N. C.) 212. As there was no further act in this case, it fails as an action for abuse of process. *Ludwick* v. *Penny*, 158 N. C. 104, 73 S. E. 228. Nor can the action be maintained as for malicious prosecution. The elements for such an action are malice, want of probable cause, and generally termination of the prior action. Termination of the prior action must be shown wherever the issue involved therein is material in the present suit. The possibility of inconsistent results and the objection of trying a pending issue collaterally require this. In jurisdictions where the process of attachment is restricted to cases of fraud, the issue in the prior action need not be raised, and no termination is necessary. *Fortman* v. *Rottier*, 8 Oh. St. 550; *Brand* v. *Hinchman*, 68 Mich. 590, 36 N. W. 664. But in Massachusetts the requirements for attachment are merely the same as those in the principal action itself. Thus the issue in the principal suit is necessarily involved in the malicious prosecution suit, and termination must be shown. *Wilson* v. *Hale*, 178 Mass. 111, 59 N. E. 632.

MASTER AND SERVANT — DUTY OF MASTER TO PROVIDE SAFE APPLIANCES — PREMISES LEASED BEFORE INJURY BUT WITHOUT SERVANT'S KNOWLEDGE. — The plaintiff's intestate, while employed about the defendant's coal docks, was injured by a defective appliance. Prior to the accident the defendant had leased the docks to another, but this fact was unknown to the plaintiff's intestate. *Held*, that the defendant is liable. *Benson* v. *Lehigh Valley Coal Co.*, 144 N. W. 774 (Minn.).

An employer's duty to furnish safe appliances, whether it sounds in contract or in tort, grows out of the relationship of master and servant. See 3 LABATT, MASTER AND SERVANT, § 898. Since a man cannot avoid his contractual liabilities by disposing of his business, (*Perry* v. *Simpson, etc. Co.*, 37 Conn. 520) if the employer be considered as impliedly contracting to furnish safe appliances, the fact of the lease should not discharge that liability. If the duty is in tort, the same result follows. The fact of the relationship creates the duty. See *Ford* v. *Fitchburg R. Co.*, 110 Mass. 240, 260. And as long as the service continues, the employer must fulfill that duty. That the service did continue in the principal case seems clear. If the relation is merely consensual, it should terminate only on notification. If it is considered contractual, some courts even require express or implied consent. See *Missouri R. Co.* v. *Ferch*, 18 Tex. Civ. App. 46, 49; 44 S. W. 317, 319. But the better view is that dismissal alone terminates the service relation, although the